

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX – REASONABLE CAUSE SHOWN FOR WAIVER OF ADDITIONS TO TAX – Reliance in good faith upon outside accountant in preparing tax returns constitutes reasonable cause for waiver of additions pursuant to W. Va. Code § 11-10-18(a)(1)-(2) [1986].

FINAL DECISION

The Director of the Field Auditing Division of the Commissioner's Office issued a consumers' sales and service tax assessment against the Petitioner. This assessment was for the period of January 1, 1999 through June 30, 2002, for tax, interest, through June 30, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked November 25, 2002, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

Subsequently, written notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

FINDING OF FACT

At the hearing the Petitioner conceded liability for the tax itself and the applicable interest, but requested waiver of additions due to reliance on the outside accountant.

DISCUSSION

The sole issue remaining is whether the Petitioner has shown reasonable cause for waiver of additions to tax, as required by W. Va. Code § 11-10A-18(a)(1)-(2) [1986].

In this instance, Petitioner showed that it relied in good faith on an “outside” certified public accountant in preparing its consumers’ sales and service tax return during the assessment period. Such reliance in good faith upon an outside accountant does constitute reasonable cause pursuant to W. Va. Code § 11-10-18(a)(1)-(2) [1986].

CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether reliance upon its outside accountant in preparing its consumers’ sales and service tax returns constitutes reasonable cause for waiver of the additions to tax.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers’ sales and service tax assessment issued against the Petitioner for the period of January 1, 1999 through June 30, 2002,

should be and is hereby **AFFIRMED** as to the **tax** and **interest**, updated through October 31, 2003; the **ADDITIONS** to tax are, however, **VACATED** in full.

Interest continues to accrue on this unpaid consumers' sales and service tax at a daily rate until this particular tax liability is fully paid.